00-0329 J.E.A. v. Skyline Electric & WCF Issued: 10-31-01

Skyline Electric Company and its workers compensation insurance carrier, Workers Compensation Fund, (referred to jointly as "Skyline") ask the Utah Labor Commission to review the Administrative Law Judge's award of benefits to J. E. A. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

ISSUE PRESENTED

Do the circumstances of Mr. A.'s accident at Skyline on March 24, 2000, satisfy the more stringent prong of the test for legal causation established by the Utah Supreme Court in Allen v. Industrial Commission, 729 P.2d 25 (Utah 1986).

FINDINGS OF FACT

The Commission adopts the ALJ's findings of fact, which may be summarized as follows.

Prior to the events of March 24, 2000, when Mr. A. suffered the accident and injury which is the subject of this proceeding, he had a history of other accidents and injuries to his low back. On March 24, 2000, Mr A. was employed by Skyline as an electrician. Hand tools at the work site were stored in a "gang box" that was 4 feet long, 2 ½ feet wide, 2 ½ feet tall, with a hinged metal lid. The lid was opened by lifting a handle located on one side. From previous experience, Mr. A. knew the lid would often "stick" when closed. When the lid was stuck, additional force was required to lift it.

Mr. A.'s accident occurred as he attempted to open the gang box . He stood in front of the box to the left of the lid handle, holding the tool in his right hand. He bent forward, twisted to his right and grasped the lid handle with his left hand. He then jerked upward with sufficient force to unstick the lid. As he did so, he experienced immediate pain in his back and legs. Mr. A. contends that the foregoing exertion was unusual or extraordinary when compared to common modern nonemployment exertions, thereby satisfying the more stringent prong of the Allen test for legal causation.

For its part, Skyline commissioned Dr. Donald Bloswick, Ph.D, Associate Professor of Mechanical Engineering at the University of Utah, to compare the mechanical forces involved in Mr. A.'s lifting of the gang box lid with other modern non-work activities. First, Dr. Bloswick determined that 54 pounds of force were required to lift the lid when it was stuck. He then calculated the compressive low back force Mr. A. would experience in lifting the lid, assuming three different lifting postures. Finally, he calculated the exertions involved in the modern non-work activities of lifting small children or automobile tires, again assuming three different lifting postures. Dr. Bloswick concluded that Mr. A.'s exertion in lifting the gang box lid was generally less than the exertion required to accomplish the other non-work activities mentioned above. However, Dr. Bloswick's calculations do not appear to precisely reflect Mr. A.'s concurrent twisting and bending motions, or the "jerking" action used to force the lid open.

DISCUSSION AND CONCLUSION OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. Utah Code Ann. §34A-2-401. To qualify for benefits under this standard, an injured worker must, among other things, establish that his or her exertions at work were the "legal cause" of the injury in question. Allen v. Industrial Commission at 25. In Price River Coal Co. v.

Industrial Commission, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." . . . . The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted.)

Thus, there are two alternative prongs to the test for legal causation. The less stringent prong applies to workers with no contributing preexisting condition. The more stringent prong applies when a contributing preexisting condition does exist. In this case, there is no dispute over the fact that Mr. A. suffered from a preexisting low-back condition that contributed to his injury of March 24, 2000. Consequently, he must satisfy the more stringent prong of the Allen test for legal causation.

The ALJ concluded that Mr. A.'s exertion in opening the gang box lid was "unusual or extraordinary exertion." In reaching this conclusion, the ALJ rejected the results of Dr. Bloswick's study because it did not accurately reflect the mechanics of Mr. A.'s actual exertion. The Commission agrees that Dr. Bloswick's study does not precisely capture and account for the bending, twisting or jerking that comprised Mr. A.'s exertion. For that reason, the Commission does not find Dr. Bloswick's conclusions persuasive.

The Commission also recognizes that is has previously dealt with a somewhat similar situation. In that case, the Commission concluded that the injured worker had engaged in an unusual or extraordinary exertion when he leaned over a truck bed to lift out a bucket full of construction debris weighing 30 pounds, and snagged the bucket on something in the process. In American Roofing v. Industrial Commission, 752 P.2d 912 (Utah App. 1988), the Utah Court of Appeals affirmed the Commission's judgment.

The circumstances of this case are essentially similar to the facts of American Roofing. The manner in which Mr. A. attempted to lift the gang box lid required bending, twisting and jerking; the force required to lift the lid was approximately 54 pounds-substantially greater than the 30 pounds in American Roofing. The Utah Supreme Court observed in Allen, 729 P.2d 729, ". . . the case law will eventually define a standard for typical 'nonemployment activity' . . . ." The Commission will attempt to follow the case law's standards for "unusual or extraordinary exertion" unless good cause is shown to modify such standards. In this case, the Commission finds no sufficient basis to depart from the pattern established in American Roofing.

In summary, the Commission has carefully compared Mr. A.'s exertion on March 24, 2000, with the common exertions of modern nonindustrial life. While twisting, bending or lifting, in themselves, are not unusual, Mr. A.'s particular combination of bending, twisting, and "jerking" a substantial weight is unusual. The Commission therefore concludes, as did the ALJ, that Mr. A.'s exertions at Skyline on March 24, 2000, satisfy the more stringent prong of the Allen test for legal causation.

ORDER

The Commission affirms the decision of the ALJ and denies Skyline's motion for review. It is so ordered.

Dated this 31st day of October, 2001.

R. Lee Ellertson, Commissioner